

later than five days after the deadline date for case briefs. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we will intend to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. See 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

We will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: April 2, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-552-802]

Notice of Preliminary Determination of Sales at Less Than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen and Canned Warmwater Shrimp From the Socialist Republic of Vietnam

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: July 16, 2004.

FOR FURTHER INFORMATION CONTACT:

James C. Doyle or Alex Villanueva, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0159, or 482-3208, respectively.

Preliminary Determination

We preliminarily determine that certain frozen and canned warmwater shrimp from the Socialist Republic of Vietnam ("Vietnam") is being, or is likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Tariff Act of 1930, as amended ("the Act"). The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Interested parties are invited to comment on this preliminary determination. We will make our final determination not later than 135 days after the date of publication of this preliminary determination.

Case History

On December 31, 2003, the Ad Hoc Shrimp Trade Action Committee, an ad hoc coalition representative of U.S. producers of frozen and canned warmwater shrimp and harvesters of wild-caught warmwater shrimp (hereafter known as, the "Petitioners"), filed, in proper form, petitions on imports of certain frozen and canned warmwater shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China ("the PRC") and Vietnam. On January 12, 2003, the Petitioners filed amendments to the petition.

On January 12, 2003, the Vietnam Association of Seafood Exporters and Producers ("VASEP") and the Vietnamese Shrimp Committee ("VSC") submitted comments regarding industry support. On January 13, 2004, the Department requested that all interested

parties submit comments on the Petitioners' calculation of industry support.

On January 13, 2004, the Petitioners filed a supplement to the petition.

On January 15, 2004, the Department received affidavits in support of the Petitioners' calculation of industry support. On January 15, 2004, VSC submitted additional comments regarding industry support. On January 16, 2004, the Petitioners submitted rebuttal comments to VSC's January 12, 2004, comments regarding industry support. On January 20, 2004, the Petitioners submitted supplemental information to the petition and revised comments to their January 16, 2004, submission.

On January 20, 2004, the Department initiated antidumping duty investigations on certain frozen and canned warmwater shrimp from Brazil, Ecuador, India, Thailand, the PRC and Vietnam. See *Notice of Initiation of Antidumping Duty Investigations: Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the People's Republic of China and the Socialist Republic of Vietnam* ("Initiation Notice") 69 FR 3876 (January 27, 2004). On January 20, 2004, the Department notified the International Trade Commission ("ITC") of the antidumping investigation initiation and the intent to publish in the **Federal Register** a notice of such initiation.

Post-Initiation General Case Issues and Letters From Outside Parties

On February 4, 2004, the Petitioners filed an amendment to their December 31, 2003 petition adding two other individuals as petitioners: Versaggi Shrimp Corporation and Indian Ridge Shrimp Company.

On February 10, 2004, the Department issued initiation instructions to U.S. Customs and Border Protection ("CBP").

On March 2, 2004, the ITC issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reasons of imports from Vietnam of certain frozen and canned warmwater shrimp. See *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand and Vietnam* ("ITC Injury Notice") 69 FR 9842 (March 2, 2004).

On March 18, 2004, VSC submitted comments regarding reporting requirements.

On May 24, 2004, the Department published in the **Federal Register** a notice postponing the preliminary determination in this investigation. See

*Notice of Postponement of Preliminary Determination of Antidumping Duty Investigations: Certain Frozen and Canned Warmwater Shrimp from Brazil (A-353-838), Ecuador (A-331-802), India (A-533-840), Thailand (A-549-822), PRC (A-570-893) and Vietnam (A-503-802*¹), 69 FR 29509 (May 24, 2004) (“*Postponement Notice*”).

Model Match, Product Characteristics, and CONNUM

On January 28, 2004 the Department requested product characteristic comments from interested parties. On February 4, 2004, the Department received model match comments from VSC, the Thai Frozen Foods Association (“TFFA”), the Coalition of Shrimp Exporters/Producers of South China (the “PRC Coalition”), the National Chamber of Aquaculture (Ecuador) (“CNA”), the Seafood Exporters’ Association of India (“SEAI”), the Marine Products Export Development Authority (“MPDEA”), and the Petitioners. On February 9, 2004, TFFA filed comments on the Petitioners’ model match submission. On February 9, and February 10, 2004, VSC and CNA, respectively, submitted rebuttal comments on the Petitioners’ February 4, 2004 model match comments.

On February 11, 2004, the Petitioners filed rebuttal comments in response to VSC’s February 4, 2004, model match comments and responses to VSC’s, TFFA’s, and CNA’s February 9 and February 10, 2004 rebuttal comments. On February 17, 2004, the Department requested comments from all interested parties on draft product characteristic reporting.

On February 18, 2004, the Department received comments on product characteristics from SEAI and granted an extension for draft product characteristic comments from February 19 to February 23, 2004. On February 19, 2004, TFFA and CNA submitted comments on model match criteria. On February 23, 2004, VSC, Brazilian shrimp exporters, and the Petitioners submitted model match comments.

Quantity and Value

On January 29, 2004, the Department sent a letter to all interested parties in this investigation requesting responses to the quantity and value questionnaire. On January 29, 2004, the Department sent a letter to the Embassy of Vietnam seeking their support in the transmittal of the quantity and value questionnaire. On February 5, 2004, the Department

received the quantity and value data from Vietnamese producers of shrimp² in accordance with our January 29, 2004, instructions. On February 20, 2004, VSC filed official company certifications for its February 5, 2004, submission.

Scope

On February 17, 2004, the Department received scope comments on behalf of Ocean Duke Corporation (“Ocean Duke”) requesting that the Department confirm that “dusted shrimp,” “battered shrimp,” and “seafood mix” not be covered by the scope of the investigation. On February 17, 2004, the Louisiana Shrimp Association (“LSA”) filed scope comments concerning fresh (never frozen) shrimp.

On February 26, 2004, Rubicon Resources (“Rubicon”) submitted scope comments in support of Ocean Duke’s February 17, 2004, scope comments. On March 12, 2004, the Petitioners filed rebuttal comments to LSA’s February 17, 2004, comments requesting an amendment of the scope of the investigations to include fresh shrimp. On March 16, 2004, the Petitioners submitted responses to the numerous scope comments concerning dusted and battered shrimp, and seafood mix.

On April 16, 2004, Ocean Duke submitted additional comments

regarding dusted and battered shrimp, arguing that they fall within the meaning of the term “breaded shrimp.” On May 6, 2004, SEAI filed scope comments regarding warmwater salad shrimp and the species *Macrobachium rosenbergii*. On May 19, 2004, the Petitioners submitted scope comments regarding dusted shrimp, battered shrimp, organic raised shrimp, warmwater salad shrimp, and the species *Macrobachium rosenbergii*.

On June 4, 2004, Exportadora de Alimentos S.A. (“Expalsa”) submitted a response to the Petitioners’ May 19, 2004, scope comments on organic shrimp. On June 4, 2004, Ocean Duke submitted a response to the Petitioners’ May 19, 2004, scope comments regarding dusted and battered shrimp. On June 7, 2004, Eastern Fish Company (“Eastern Fish”) and Long John Silver’s, Inc. (“LJS”) filed scope comments regarding dusted shrimp and battered shrimp. On June 9, 2004, the Department received certification for American Breaded Shrimp Processors Association’s (“ABSPA”) June 7, 2004, submission.

Mandatory Respondents

On February 23, 2004, the Department issued its respondent selection memorandum, selecting Seaprodux Minh Hai; Camimex; Kim Ahn; and Mihn Phu as mandatory respondents (hereafter collectively referred to as the “Respondents”). See *Memorandum to the File from James C. Doyle, Program Manager, to Edward C. Yang, Director of Office IX, Antidumping Duty Investigation of Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam: Selection of Respondents* (“*Respondent Selection Memo*”).

On February 25, 2004, the Department issued the Department’s non-market economy (“NME”) antidumping duty Section A questionnaire to the Respondents, with a March 17, 2004, deadline to file responses.

On March 1, 2004, the Department issued Sections C, D and E of the Department’s NME questionnaire to the Respondents. On March 9, 2004, the Department informed the Respondents of revised reporting requirements with regard to Sections C and D of the antidumping duty questionnaire. On March 11, 2004 the Department sent the Government of Vietnam copies of the Department’s NME questionnaires.

On March 12, 2004, VSC submitted applicable Vietnamese laws to the Department in response to the Department’s Section A questionnaire. On March 19, 2004, the Respondents requested a three-week extension of the

¹ The Department inadvertently listed case number A-503-882 as Vietnam’s case number in the *Postponement Notice*. The correct case number for Vietnam is A-552-802.

² Minh Phu Seafood Corporation (“Minh Phu”); Kim Anh Co., Ltd. (“Kim Anh”); Minh Hai Joint-Stock Seafoods Processing Company (“Seaprodux Minh Hai”); Camau Frozen Seafood Processing Import Export Corporation (“Camimex”); Can Tho Animal Fisheries Product Processing Export Enterprise (“Cafatex”); Cai Doi Vam Seafood Import Export Company (“Cadovimex”); Sao Ta Foods Joint Stock Company (“Fimex VN”); Viet Hai Seafood Company (“Vietnam FishOne”); Kiengiang Seafood Import Export Company (“Kisimex”); Soc Trang Aquatic Products and General Import Export Company (“Stapimex”); Coastal Fisheries Development Corporation (“Cofidec”); Phuong Nam Co., Ltd.; Cuu Long Seaproducts Company (“Cuu Long Seapro”); Minh Hai Export Frozen Seafood Processing Joint-Stock Company (“Jostoco”); Can Tho Agriculture and Animal Products Import Export Company (“Cataco”); Nha Trang Fisheries Co.; Nhatrang Seaproduct Company (“Nhatrang Seafoods”); Minh Hai Seaproducts Import and Export Corporation (“Seaprimex”); Thuan Phuoc Seafoods and Trading Corporation; Nhatrang Fisheries Joint Stock Company (“Nhatrang Fishco”); Danang Seaproducts Import Export Company (“Seaprodux Danang”); C.P. Vietnam Livestock; UTXI Aquatic Products Processing Company; Viet Nhan Company; Investment Commerce Fisheries Corporation (“Incomfish”); Vinhloi Import Export Company (“Vimexico”); Bac Lieu Fisheries; Matourimex Ho Chi Minh City Branch (Tourism Material and Equipment Company); Viet Foods Co., Ltd.; Truc An Company; Camranh Seafoods Processing Enterprise PTE (“Camranh Seafoods”); Hai Thuan Company; Phu Cuong Company; Ngoc Sinh Company; Aquatic Product Trading Company (“APT”); Aquatic Songhuong Company; Hanoi Seaproducts Import Export Corp. (“Seaprodux Hanoi”); An Giang Fisheries Import-Export Joint Stock Company (“Agifish”).

deadline for responses to Sections C and D of the Department's antidumping questionnaire. The deadline was granted on March 19 and extended until April 21, 2004.

On March 25, 2004, the Department sent a letter to Camimex and Jostoco regarding collapsing the two companies. On March 25, 2004, the Department requested additional information from Jostoco regarding their response to the Section A questionnaire.

On March 25, 2004, the Petitioners submitted comments on the Section A responses of Kim Anh and Minh Phu. On March 26, 2004, the Petitioners submitted comments on the Section A responses of Seaprodex Minh Hai and Camimex. On March 29, 2004, the Department sent supplemental questionnaires to Minh Phu, Seaprodex Minh Hai, Camimex, and Kim Anh. On April 1, 2004, Seaprodex Minh Hai filed a letter clarifying its relationship with Seaprodex Vietnam.

On April 5, 2004, the Respondents requested a three-week extension to respond to the Department's supplemental Section A questionnaire. On April 7, 2004, the Department granted a ten-day extension from April 12 to April 22, 2004.

On April 13, 2004, the Department sent a supplemental questionnaire to Jostoco. On April 16, 2004, Jostoco requested a two-week extension to file responses to the Department's supplemental Section A questionnaire. On April 20, 2004, the Department granted Jostoco's Section A supplemental questionnaire extension request until April 27, 2004. On April 20, 2004, Jostoco requested an extension of the deadline for Section C and D questionnaire responses. On April 21, 2004, the Department granted Jostoco's request, extending the deadline to April 28, 2004.

On April 21, 2004, Camimex, Kim Anh, Minh Phu, and Minh Qui submitted responses to the Section C and D questionnaires. On April 22, 2004, the Department received Section A responses from Kim Anh, Seaprodex Minh Hai, Minh Phu, and Minh Qui. On April 22, 2004, Seaprodex Minh Hai submitted Section C and D questionnaire responses. On April 23, 2004, Camimex and Seaprodex Minh Hai filed their Section A responses. On April 23, 2004, Seaprodex Minh Hai requested and extension of time to respond to the Department's supplemental Section A questionnaire. On April 26, 2004, the Department extended Seaprodex Minh Hai's deadline to respond to the Section A supplemental questionnaire to May 4, 2004. On April 28, 2004, Seaprodex

Minh Hai submitted Section C and D questionnaire responses.

On April 30, 2004, the Petitioners filed comments on the Respondents' supplemental Section A, C and D questionnaires. The Petitioners submitted proposed additional questions for Minh Phu, Minh Qui, Minh Phat, Camimex, Seaprodex Minh Hai, and Kim Anh.

On May 3, 2004, Kim Anh's filed its supplemental Section D questionnaire response. On May 4, 2004, Seaprodex Minh Hai submitted its second supplemental Section A questionnaire response. On May 14, 2004, the Department sent the Respondents supplemental questionnaires addressing deficiencies in their Section A questionnaire responses.

On May 21, 2004, Camimex, Minh Phu, Seaprodex Minh Hai, and Kim Anh requested an extension of the deadline for the submission of supplemental Section A, C and D questionnaire responses. On May 25, 2004, the Department granted an extension for supplemental questionnaire responses. On May 26, 2004, the Department granted a one-week extension to June 4, 2004, to Camimex, Seaprodex Minh Hai, and Minh Phu to respond to their supplemental Section A, C and D questionnaires. The Department also granted a one-week extension to Kim Anh to June 8, 2004.

On May 28, 2004, the Respondents requested an extension of the deadline for supplemental Section A, C and D questionnaire responses. On May 28, 2004 the Department granted a one-week extension to June 9, 2004, to the Respondents to respond to the Department's Section A supplemental questionnaire. On June 3, 2004, the Department granted Kim Anh an extension of the deadline to respond to the Department's May 18, 2004 supplemental questionnaire.

On June 8, 2004, the Respondents requested an extension of the deadline for supplemental Section A, C and D questionnaire responses.

Surrogate Country and Factors

On March 5, 2004, the Department requested a list of surrogate countries from the Office of Policy. On March 12, 2004, the Department provided all interested parties with the opportunity to submit surrogate value information for valuing factors of production. On March 17, 2004, VSC requested a three-week extension to file surrogate country comments. The deadline was extended to April 2, 2004.

On March 29, 2004, VSC requested an additional extension of one week to comment on surrogate country

selection. On March 31, 2004, a number of interested parties requested a three-week extension of the deadline to file comments on the appropriate surrogate country. On March 31, 2004, the Department granted a one-week extension for all surrogate country comments and set a new deadline of April 9, 2004. On April 9, 2004, VSC submitted surrogate value data. On April 30, 2004, VSC requested an extension of the deadline to file surrogate value information. On May 4, 2004, the Petitioners requested an extension of time to submit surrogate value data. On May 5, 2004, the Department granted a two-week extension to May 21, 2004, for all parties to submit surrogate value data.

On May 21, 2004, the Petitioners submitted surrogate value data for the factors of production. On May 21, 2004, VSC submitted a letter regarding publicly available information to value production factors. On June 4, 2004, the Respondents requested an extension of the deadline for the supplemental questionnaire response on surrogate values. On June 4, 2004, the Petitioners commented on VSC's surrogate value data. On June 7, 2004, the Department granted the Respondents a one-week extension to June 9, 2004, to answer the June 2, 2004, surrogate values questionnaire. On June 9, 2004, VSC submitted their surrogate value supplemental questionnaire response.

On June 16, 2004, the VASEP submitted rebuttal comments to Petitioners' surrogate values submission of June 4, 2004.

On June 22, 2004, VASEP submitted additional comments regarding the valuation of energy. On June 23, 2003, the Petitioners submitted additional surrogate value comments. On June 25, 2004, VASEP submitted comments regarding surrogate values. On June 29, 2004, the Department placed additional surrogate value data on the record and the Petitioners submitted additional comments regarding VASEP's June 22, 2004 comments.

Section A Respondents

On March 15, 2004, VSC requested an extension of the deadline for the Section A voluntary responses. A one-week extension for all Respondents was granted on March 16, 2004. *See* Memo to the File, from Lisa Shishido, dated March 15, 2004.

On March 17, 2004, the Department received Section A responses from the mandatory respondents along with: CP Vietnam Livestock; Bac Lieu Fisheries; UTXI Aquatic products Processing Company; Stapimex; Fimex VN; Nha Trang Fisheries Co.; Truc An Company;

Cadovimex; Vietnam FishOne; Cofidec; Jostoco; and Cafatex. On March 18, 2004, the Department received Section A responses from: Nha Trang Seafoods; Aquatic Songhuong Company; Seaprodex Hanoi; Nha Trang Fishco; Cuulong Seapro; Viet Nhan Company; Viet Foods Co. Ltd.; Incomfish; Seaprimex; and Seaprodex Danang. On March 19, 2004, the Department received Section A responses from: Haithuan Company; Pataya VN; Phu Cong Company; Vimexco; Ngoc Sinh Company; Camrahn Seafoods; APT; Kisimex; Cataco; Thuan Phuoc Seafoods and Trading Corporation; Phuong Nam Company Ltd. On March 24, 2004, the Department received a Section A response from Amanda Foods Vietnam Limited ("Amanda").

On May 24, 2004, the Department sent supplemental Section A questionnaires to the following companies: Ngoc Sinh; Cofidec; Qnaire; Stapimex; Hai Thuan; Songhuong; Nha Trang Fishco; Nha Trang Seafoods; C.P. Vietnam; UTXI; Viet Foods; Kisimex; Truc An; Nha Trang; APT; Pataya Food; Cataco; Seaprodex Danang; Phuong Nam; Sao Ta; Cuu Long; Minh Hai; Cafatex; Camranh Seafoods; Thuan Phuoc; Cadovimex; and Viet Hai. On May 26, 2004, the Department sent supplemental Section A questionnaires to: Viet Nhan, Incomfish, Vimexco and Bac Lieu. On May 28, 2004, the Department received a letter from Bac Lieu, Incomfish, Viet Nhan and Vimexco requesting an extension of the deadline for their supplemental Section A questionnaire responses. The Department extended the deadline by one week to June 8, 2004.

On May 28, 2004, Amanda requested a two-week extension to respond to the Department's supplemental Section A questionnaires. On May 28, 2004, the Department sent Phu Cuong Company and Minh Hai Jostoco supplemental Section A questionnaires. On June 1, 2004, the Department granted Amanda a one week extension to June 15, 2004, to respond to the supplemental Section A questionnaire. On June 4, 2004, Amanda requested an additional three-day extension to respond to the supplemental Section A questionnaire. On June 7, 2004, the Department granted a one-day extension to Amanda to respond to their Section A questionnaire to June 9, 2004. On June 7, 2004, the Department received a request for an extension of the deadline for supplemental questionnaires issued to: Cam Ranh; Cofidec; C.P. Livestock; Kisimex; Seaprimexco; Seaprodex Danang; Seaprodex Hanoi; Stapimex; ASC; APT; Ngoc Sinh; and Truc An Company. On June 10, 2004, the

Department granted the Respondents an extension of the deadline to respond to the Department's May 14, 2004, supplemental questionnaires.

Critical Circumstances Allegation

On May 19, 2004, the Petitioners submitted a request for an expedited critical circumstances finding to the Department. On May 27, 2004, VSC filed a letter opposing the Petitioners request that the Department determine that "critical circumstances" exist with respect to the importation of subject merchandise from Vietnam. On May 28, 2004, the Department sent a letter to the Respondents requesting monthly shipment data pertaining to the Petitioners' critical circumstances allegation.

On June 2, 2004, the Department sent a letter to Jostoco requesting monthly shipment data pertaining to the Petitioners' critical circumstances allegation. On June 2, 2004, the Department requested additional information from the Respondents in the form of a supplemental questionnaire to be due June 7, 2004.

On June 14, 2004, the Department received a request for a one-day extension to respond to the Department's May 28, 2004, request for critical circumstances data. The request was granted and the deadline was extended to June 15, 2004. On June 24, 2004, the Petitioners submitted supplemental critical circumstances data on the record.

Headless, Shell-on ("HLSO") Issue

On May 21, 2004, the Department sent all interested parties a letter soliciting comments on the appropriate methodology to employ in making product comparisons, where applicable, and performing margin calculations for the purposes of the preliminary determination in the investigation. On June 7, 2004, the Department received comments on product comparison methodology from the Petitioners, VSC, CNA, Empresa De Armazenagem Frigorifica Ltda. ("EMPAF"), and Rubicon.

On June 8, 2004, the Department received comments from Thai I-Mei Frozen Foods Co., Ltd. and its affiliated reseller, Ocean Duke, on calculation methodology for the preliminary determination. Thai I-Mei Frozen Foods Co. addressed the issue of HLSO calculations in its letter.

On June 10, 2004, Union Frozen Products Co., Ltd. ("UFP") replied to the Petitioners' June 7, 2004, submission on the issue of calculations being performed using data provided on an "as sold" basis or on an HLSO basis. On

June 10, 2004, Rubicon submitted comments on the Petitioners' June 4, 2004, comments on the use of HLSO count sizes for comparisons and margin calculations.

On June 10, 2004, the Department received a request that SEAI's June 7, 2004, comments concerning the Department's appropriate methodology to employ in making product comparisons in the Indian investigation (A-533-84) be filed on the record of this investigation. On June 15, 2004, the Department received the Petitioners' rebuttal comments regarding the use of HLSO count sizes. On June 25, 2004, SEAI submitted additional comments on Petitioners' product comparison comments of June 15, 2004.

NME Status

On June 10, 2004, the Ministry of Trade of Vietnam submitted comments on the NME status of Vietnam on behalf of the Government of Vietnam.

Postponement of Final Determination

Section 735(a) of the Act provides that a final determination may be postponed until no later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise or, in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. The Department's regulations at 19 CFR 351.210(e)(2) requires that requests by respondents for postponement of a final determination be accompanied by a request for an extension of the provisional measures from a four-month period to not more than six months.

On June 17, 2004, the respondents requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until 135 days after the publication of the preliminary determination. The Respondents' request also included a request to extend the provisional measures to not more than six months after the publication of the preliminary determination. Accordingly, because we have made an affirmative preliminary determination and the requesting parties account for a significant proportion of the exports of the subject merchandise, we have postponed the final determination until no later than 135 days after the date of publication of the preliminary determination and are

extending the provisional measures accordingly.

Period of Investigation

The period of investigation ("POI") is April 1, 2003, through September 30, 2003. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (December 31, 2003). See 19 CFR 351.204(b)(1).

Scope of Investigation

The scope of this investigations includes certain warmwater shrimp and prawns, whether frozen or canned, wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,³ deveined or not deveined, cooked or raw, or otherwise processed in frozen or canned form.

The frozen or canned warmwater shrimp and prawn products included in the scope of the investigations, regardless of definitions in the Harmonized Tariff Schedule of the United States ("HTSUS"), are products which are processed from warmwater shrimp and prawns through either freezing or canning and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the *Penaeidae* family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannamei*), banana prawn (*Penaeus merguensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of the investigations. In addition, food preparations, which are not "prepared meals," that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of the investigations.

Excluded from the scope are (1) breaded shrimp⁴ and prawns (1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (1605.20.05.10); and (5) dried shrimp and prawns.

The products covered by this scope are currently classifiable under the following HTSUS subheadings; 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, 1605.20.10.30, and 1605.20.10.40. These HTSUS subheadings are provided for convenience and for CBP purposes only and are not dispositive, but rather the written descriptions of the scope of these investigations is dispositive.

In accordance with the preamble to our regulations (see *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997)), we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. See *Initiation Notice* 69 FR at 3877.

Throughout the 20 days and beyond, the Department received many comments and submissions regarding a multitude of scope issues, including: (1) fresh (never frozen) shrimp, (2) Ocean Duke's seafood mix, (3) salad shrimp sold in counts of 250 pieces or higher, (4) *Macrobrachium rosenbergii*, organic shrimp, (5) peeled shrimp used in breading, (6) dusted shrimp and (7) battered shrimp. On May 21, 2004, the Department determined that the scope of these investigations remains unchanged, as certain frozen and canned warmwater shrimp, without the addition of fresh (never frozen) shrimp. See *Memorandum from Jeffrey A. May, Deputy Assistant Secretary for Import Administration, AD/CVD Enforcement, Group III and Joseph A. Spetrini, Deputy*

Assistant Secretary for Import Administration, AD/CVD Enforcement, Group I to James J. Jochum, Assistant Secretary for Import Administration Regarding Antidumping Investigations on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, the Socialist Republic of Vietnam, Thailand, and the Socialist Republic of Vietnam: Scope Determination Regarding Fresh (Never Frozen) Shrimp ("Fresh Shrimp Memo"), dated May 21, 2004.

On July 2, 2004, the Department made scope determinations with respect to Ocean Duke's seafood mix, salad shrimp sold in counts of 250 pieces or higher, *Macrobrachium rosenbergii*, organic shrimp and peeled shrimp used in breading. See *Memorandum from Edward C. Yang, Vietnam/NME Unit Coordinator, Import Administration to Jeffrey A. May, Deputy Assistant Secretary for Import Administration Antidumping Investigation on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the Socialist Republic of Vietnam and the Socialist Republic of Vietnam: Scope Clarification on Ocean Duke's Seafood Mix, Salad Shrimp Sold in Counts of 250 Pieces or Higher, Macrobrachium rosenbergii, Organic Shrimp and Peeled Shrimp Used in Breading ("Scope Memo")*, dated July 2, 2004. Based on the information presented by interested parties, the Department determines that Ocean Duke's seafood mix is excluded from the scope of this investigation; however, salad shrimp sold in counts of 250 pieces or higher, *Macrobrachium rosenbergii*, organic shrimp and peeled shrimp used in breading are included within the scope of this investigation. See *Scope Memo* at 33.

Additionally, on July 2, 2004, the Department made a scope determination with respect to dusted shrimp and battered shrimp. See *Dusted/Battered Scope Memo*. Based on the information presented by interested parties, the Department preliminarily finds that while substantial evidence exists to consider battered shrimp to fall within the meaning of the breaded shrimp exclusion identified in the scope of these proceedings, there is insufficient evidence to consider that shrimp which has been dusted falls within the meaning of "breaded" shrimp. However, there is sufficient evidence for the Department to be prepared to exclude this merchandise from the scope of the order provided an appropriate description can be developed. See *Dusted/Battered Scope Memo* at 18. To that end, along with the previously solicited comments regarding breaded

³ "Tails" in this context means the tail fan, which includes the telson and the uropods.

⁴ Pursuant to our scope determination on battered shrimp, we find that breaded shrimp includes battered shrimp as discussed below. See *Memorandum from Edward C. Yang, Vietnam/NME Unit Coordinator, Import Administration to Jeffrey A. May, Deputy Assistant Secretary for Import Administration Antidumping Investigation on Certain Frozen and Canned Warmwater Shrimp from Brazil, Ecuador, India, Thailand, the Socialist Republic of Vietnam and the Socialist Republic of Vietnam: Scope Clarification on Dusted Shrimp and Battered Shrimp ("Dusted/Battered Scope Memo")*, dated July 2, 2004.

and battered shrimp, the Department solicits comments from interested parties which enumerate and describe a clear, administrable definition of dusted shrimp. The Department considers these comments would be helpful in its evaluation of the disposition of the status of dusted shrimp. *See Dusted/Battered Scope Memo* at 23.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Section 777A(c)(2) of the Act provides the Department discretion, when faced with a large number of exporters/producers, however, to limit its examination to a reasonable number of such companies if it is not practicable to examine all companies. Where it is not practicable to examine all known producers/exporters of subject merchandise, this provision permits the Department to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available to the Department at the time of selection or (2) exporters/producers accounting for the largest volume of the merchandise under investigation that can reasonably be examined. After considering the complexities in this proceeding and its resources, the Department determined that it was not practicable in this investigation to examine all known producers/exporters of subject merchandise. *See Respondent Selection Memo* at 2. Instead, we limited our examination to the four exporters and producers accounting for the largest volume of the subject merchandise pursuant to section 777A(c)(2)(B) of the Act. The four Vietnamese producers/exporters (Minh Phu, Kim Ahn, Camimex and Minh Hai), accounted for a significant percentage of all exports of the subject merchandise from the Vietnam during the POI and were selected as mandatory respondents. *See Respondent Selection Memo* at 3.

Affiliations

Section 771(33)(E) of the Tariff Act of 1930, as amended (“the Act”) provides that the Department will find parties to be affiliated if any person directly or indirectly owns, controls, or holds with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization; section 771(33)(F) provides that parties are affiliated if two or more persons directly or indirectly control, or are controlled by, or under common control with any other person; and section 771(33)(G) of the Act provides that

parties are affiliated if any person controls any other person. To the extent that section 771(33) of the Act does not conflict with the Department’s application of separate rates or enforcement of the NME provision, section 773(c) of the Act, the Department will determine that exporters and/or producers are affiliated if the facts of the case support such a finding. Therefore, we have examined whether Camimex and Jostoco are affiliated within the meaning of section 771(33) of the Act below.

Pursuant to 19 CFR 351.401(f), the Department will collapse producers and treat them as a single entity where (1) those producers are affiliated, (2) the producers have production facilities for producing similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities, and (3) there is a significant potential for manipulation of price or production. In determining whether a significant potential for manipulation exists, the regulations provide that the Department may consider various factors, including (1) the level of common ownership, (2) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm, and (3) whether the operations of the affiliated firms are intertwined. (*See Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 12764, 12774 (March 16, 1998) and *Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails from Taiwan*, 62 FR 51427, 51436 (October 1, 1997)). Furthermore, we note that the factors listed in 19 CFR 351.401(f)(2) are not exhaustive, and, in the context of an NME investigation or administrative review, other factors unique to the relationship of business entities within the NME may lead the Department to determine that collapsing is either warranted or unwarranted, depending on the facts of the case. *See Hontex Enterprises, Inc. v. United States*, 248 F. Supp. 2d 1323, 1342 (CIT 2003) (noting that the application of collapsing in the NME context may differ from the standard factors listed in the regulation).

In summary, depending upon the facts of each investigation or administrative review, if there is evidence of significant ownership ties or control between or among producers which produce similar and/or identical merchandise but may not all produce their product for sale to the United States, the Department may find such evidence sufficient to apply the collapsing criteria in an NME context in

order to determine whether all or some of those affiliated producers should be treated as one entity (*see Certain Hot-Rolled Carbon Steel Flat Products from the People’s Republic of China, Preliminary Determination of Sales at Less Than Fair Value*, 66 FR 22183 (May 3, 2001) (“Baosteel”) as upheld by the Court of International Trade⁵). Therefore, based on the totality of the circumstances, the Department will collapse affiliated producers and treat them as a single entity where the criteria of 19 CFR 351.401(f) are met. Therefore, in this case, we have examined whether Camimex and Jostoco should be collapsed within the meaning of 19 CFR 351.401(f).

In this case, Camimex held a significant ownership share (*i.e.*, 51%) of Jostoco for the first four months of the POI. *See Camimex’s March 17, 2004, submission at Exhibit 5, and page 13.* In addition, Camimex and Jostoco shared a company official, Mr. Tran Quang Chieu (“Mr. Chieu”) who was the Chairman of the Board of Management for Jostoco for the first four months of the POI, and was the Director of Camimex for the entire POI. *See Camimex’s April 23, 2004 submission at Exhibit 4, and page 25.* Mr. Chieu’s responsibilities as the Director of Camimex include (1) Building a production and marketing strategy; (2) highlighting areas of improvement; (3) overseeing company operations; (4) nominating managers; and (5) ensuring the general success of the company. *See Camimex’s March 17, 2004, submission at 11.* At Jostoco Mr. Chieu’s responsibilities as Chairman of the Board of Management included (1) representing Camimex’s interest in Jostoco (Camimex received 51% of Jostoco’s dividends due to its 51% ownership in Jostoco); and (2) convening Board of Management meetings. *See Camimex’s April 23, 2004, submission at 26.* While day-to-day operations of Jostoco are the responsibility of the Director, the Board of Management, made up of the largest shareholders, appoints the Director. *See Jostoco’s March 17, 2004, submission at Exhibit 5 and page 8.*

The Department’s examination of the facts in this case are necessarily retrospective and reflective of the entire POI and not limited to merely the time before Camimex sold its shares to Jostoco. However, the Department finds that the record evidence demonstrates that Jostoco was affiliated with Camimex for the first four months of the POI in accordance with section

⁵ *Anshan Iron & Steel Co. v. United States*, 2003 Ct. Int’l Trade, Lexis 109,50, Slip Op. 2003–83 (July 26, 2003).

771(33)(E) of the Act for the reasons stated above. However, once Camimex sold its shares of Jostoco and Mr. Chieu ceased to be a Jostoco company official, there is no evidence on the record that the two companies were affiliated after that point. Therefore, based on the facts of record, we preliminarily find that Camimex and Jostoco were affiliated for the first four months of the POI under the meaning of section 771(33) of the Act.

Based on data contained in Camimex's and Jostoco's March 17, 2004, Section A responses, it is clear that Camimex and Jostoco produced frozen warmwater shrimp during the POI. Therefore, we find that the first and second collapsing criteria are met here because these companies were affiliated as explained above and have production facilities for producing similar or identical products that would not require substantial retooling in order to restructure manufacturing priorities. See factors of production data submitted by Camimex on April 21, 2004, and Jostoco on April 28, 2004, and Camimex's April 21, 2004, submission at Exhibit 5 and Jostoco's April 28, 2004, submission at Exhibit 4. Indeed, Camimex and Jostoco are required to produce frozen warmwater shrimp using substantially identical procedures and techniques (known as Hazard Analysis and Critical Point Control ("HACCP") techniques) in order to sell shrimp in the United States. HACCP plans are required by the U.S. Food and Drug Administration to ensure food safety in the United States. The HACCP plan mandates each stage of processing and the requirements at each stage of processing. As stated by Camimex, "the HACCP plan is the most comprehensive document setting forth the production process for each finished product." Both Camimex and Jostoco have stated that they follow HACCP procedures. See Camimex's April 21, 2004, submission at 4 and Jostoco's April 28, 2004 submission at 4.

However, we find that the third collapsing criterion has not been met in this case because a significant potential for manipulation of price or production no longer exists among Camimex and Jostoco. As explained above, there was a level of common ownership between and among these companies for the first four months of the POI which would facilitate the manipulation of prices; however, this relationship no longer exists. We note that Jostoco purchased frozen shrimp (subject merchandise) from Camimex and Jostoco sold fresh shrimp to Camimex. See Camimex's April 23, 2004, submission at 41 and Camimex's April 23, 2004, submission at Exhibit 6. This leads us to believe that

the operations of Camimex and Jostoco during the first four months of the POI may have been intertwined. However, based on the circumstances during two months of the POI, in following the guidance of 19 CFR 351.401(f), that there is not a significant potential for manipulation of price or production between these parties. Consequently, collapsing these entities is not appropriate at this time.

Non-Market Economy Country

In a previous investigation, the Department has determined that Vietnam is an NME. See *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 214986 (January 31, 2003). In accordance with section 771(18)(C)(i) of the Tariff Act of 1930, as amended ("the Act"), the presumption of NME status remains in effect until revoked by the Department. See *Notice of Final Determination of Sales at Less Than Fair Value: Saccharin From the People's Republic of China*, 68 FR 27530 (May 20, 2003). The presumption of NME status for Vietnam has not been revoked by the Department and remains in effect for purposes of the initiation of this investigation.

On June 14, 2004, the GOV submitted comments regarding the Department's treatment of Vietnam as an NME. We appreciate the GOV's efforts in reforming their economy; however, while we appreciate being apprised by the GOV of their continued efforts in this matter, our law and process does not contemplate ongoing monitoring or review of developments in the Vietnamese economy in this context.

Therefore, for purposes of this preliminary determination, Vietnam has been treated as an NME country. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. See also *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results 2001-2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003). When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base the normal value on the NME producer's factors of production, valued in an economically comparable market economy that is a significant producer of comparable

merchandise. The sources of individual factor prices are discussed under the "Factor Valuations" section, below.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value ("NV"), in most circumstances, on the NME producer's factors of production, valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall utilize, to the extent possible, the prices or costs of factors of production in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the NV section below.

The Department determined that Bangladesh, Pakistan, India, Indonesia, and Sri Lanka are countries comparable to Vietnam in terms of economic development. See *Memorandum from Ron Lorentzen to James Doyle: Antidumping Duty Investigation on Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam*, dated March 9, 2004. We select an appropriate surrogate country based on the availability and reliability of data from the countries. See *Department Policy Bulletin No. 04.1: Non-Market Economy Surrogate Country Selection Process* ("Policy Bulletin"), dated March 1, 2004. In this case, we have found that Bangladesh is a significant producer of comparable merchandise, frozen and canned warmwater shrimp, and is at a similar level of economic development pursuant to section 773(c)(4) of the Act. See *Surrogate Country Memo* at 7. Since our issuance of the *Surrogate Country Memo*, we have not received comments from interested parties.

Separate Rates

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. The four

mandatory respondents and the Section A respondents have provided company-specific information and each has stated that it met the standards for the assignment of a separate rate.

We have considered whether each Vietnam company is eligible for a separate rate. The Department's separate-rate test is not concerned in general, with macroeconomic/border-type controls, e.g., export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See *Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61757 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). In accordance with the separate-rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* governmental control over export activities.

1. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. See *Sparklers*, 56 FR at 20589.

Our analysis shows that the evidence on the record supports a preliminary finding of *de jure* absence of governmental control for certain companies based on the following: (1)

An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) the applicable legislative enactments decentralizing control of the companies; and (3) any other formal measures by the government decentralizing control of companies. See *Memorandum to Edward C. Yang, Director, Non-Market Economy Unit, Import Administration, from Nicole Bankhead and Irene Gorelick, Case Analysts through James C. Doyle, Program Manager, Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam: Separate Rates for Producers/Exporters that Submitted Questionnaire Responses*, dated July 2, 2004 ("*Separate-Rates Memo*").

2. Absence of *De Facto* Control

Typically the Department considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. See *Silicon Carbide*, 59 FR at 22586-87; see also *Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China*, 60 FR 22544, 22545 (May 8, 1995). An analysis of *de facto* control is critical in determining whether respondents export activities are in fact subject to a degree of government control which would preclude the Department from assigning separate rates.

We determine that, for the mandatory respondents and certain Section A respondents, the evidence on the record supports a preliminary finding of *de facto* absence of governmental control based on record statements and supporting documentation showing the following: (1) Each exporter sets its own export prices independent of the government and without the approval of a government authority; (2) each exporter retains the proceeds from its sales and makes independent decisions regarding disposition of profits or financing of losses; (3) each exporter has the authority to negotiate and sign contracts and other agreements; and (4) each exporter has autonomy from the government regarding the selection of

management. For a detailed discussion of the company-specific analysis, please see the *Separate Rates Memo*.

Therefore, the evidence placed on the record of this investigation by the mandatory respondents and certain Section A respondents demonstrates an absence of government control, both in law and in fact, with respect to each of the exporter's exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide*. As a result, for the purposes of this preliminary determination, we have granted separate, company-specific rates to the mandatory respondents and certain Section A respondents which shipped certain frozen and canned warmwater shrimp to the United States during the POI. For a full discussion of this issue and list of Section A respondents, please see the *Separate-Rates Memo*.

Vietnam-Wide Rate

The Department has data that indicates there are more known exporters of the certain frozen and canned warmwater shrimp from Vietnam during the POI than responded to our quantity and value ("*Q&V*") questionnaire. See *Respondent Selection Memo*. Although we issued the Q&V questionnaire to 12 known Vietnamese exporters of subject merchandise, we received Q&V questionnaire responses from thirty-eight companies, including those from the four mandatory respondents. In addition, we received thirty-eight Section A questionnaire responses by the due date. Although we received the exact same number of Q&V questionnaire responses as Section A questionnaire responses, we note that the companies who responded to the Q&V questionnaire did not necessarily respond to the Section A questionnaire. Also, on January 29, 2004, we issued a Section A questionnaire to the GOV. Although all exporters were given an opportunity to provide information showing they qualify for separate rates, not all of these other exporters provided a response to either the Department's Q&V questionnaire or its Section A questionnaire. Further, the GOV did not respond to the Department's questionnaire. Therefore, the Department determines preliminarily that there were exports of the merchandise under investigation from other Vietnam producers/exporters, which are treated as part of the countrywide entity.

Section 776(a)(2) of the Act provides that, if an interested party: (A) withholds information that has been requested by the Department, (B) fails to

provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act, (C) significantly impedes a determination under the antidumping statute, or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Information on the record of this investigation indicates that there are numerous producers/exporters of the certain frozen and canned warmwater shrimp in Vietnam. As described above, all exporters were given the opportunity to respond to the Department's questionnaire. Based upon our knowledge of the volume of imports of subject merchandise from Vietnam and the fact that information indicates that the responding companies did not account for all imports into the United States from Vietnam, we have preliminarily determined that certain Vietnam exporters of certain frozen and canned warmwater shrimp failed to respond to our questionnaires. As a result, use of facts available ("FA") pursuant to section 776(a)(2)(A) of the Act is appropriate. Additionally, in this case, the GOV did not respond to the Department's questionnaire, thereby necessitating the use of FA to determine the Vietnam-wide rate. See *Notice of Preliminary Determination of Sales at Less Than Fair Value, Affirmative Preliminary Determination of Critical Circumstances and Postponement of Final Determination: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam*, 68 FR 4986 (January 31, 2003).

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may employ adverse inferences if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel*

Products from the Russian Federation, 65 FR 5510, 5518 (February 4, 2000). See also "Statement of Administrative Action" accompanying the URAA, H.R. Rep. No. 103-316, 870 (1994) ("SAA"). We find that, because the Vietnam-wide entity and certain producers/exporters did not respond at all to our request for information, they have failed to cooperate to the best of their ability. Therefore, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

In accordance with our standard practice, as adverse facts available ("AFA"), we have assigned to the Vietnam-wide entity the higher of the highest margin stated in the notice of initiation (*i.e.*, the recalculated petition margin) or the highest margin calculated for any respondent in this investigation. See *e.g.*, *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Quality Steel Products from the Socialist Republic of Vietnam*, 65 FR 34660 (May 31, 2000), and accompanying decision memorandum at Comment 1. In this case, we have applied a rate of 93.13 percent, the highest rate calculated in the *Initiation Notice* of the investigation from information provided in the petition. See, *e.g.*, *Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Germany*, 63 FR 10847 (March 5, 1998).

Corroboration of Information

Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described in the SAA as "information derived from the petition that gave rise to the investigation or review, the final determination concerning subject merchandise, or any previous review under section 751 concerning the subject merchandise." See SAA at 870. The SAA provides that to "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. The SAA also states that independent sources used to corroborate

may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. As explained in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996) ("Japan Notice"), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

The Petitioners' methodology for calculating the export price and NV in the petition is discussed in the initiation notice. See *Initiation Notice*, 69 FR at 3876. To corroborate the AFA margin of 93.13 percent, we compared that margin to the margins we found for the respondents.

As discussed in the Memorandum to the File regarding the corroboration of the AFA rate, dated July 2, 2004, we found that the margin of 93.13 percent has probative value. See *Memorandum to the File from Alex Villanueva, Senior Case Analyst through James C. Doyle, Program Manager and Edward C. Yang, Director, NME Unit, Preliminary Determination in the Investigation of Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam, Corroboration Memorandum ("Corroboration Memo")*, dated July 2, 2004. Accordingly, we find that the highest margin, based on the petition information as described above, of 93.13 percent is corroborated within the meaning of section 776(c) of the Act.

Consequently, we are applying a single antidumping rate—the Vietnam-wide rate—to producers/exporters that failed to respond to the Q&V questionnaire or Section A questionnaire, as well as to exporters which did not demonstrate entitlement to a separate rate. See *e.g.*, *Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the Socialist Republic of Vietnam*, 65 FR 25706, 25707 (May 3, 2000). The Vietnam-wide rate applies to all entries of the merchandise under investigation except for entries from the four mandatory respondents and certain Section A respondents.

Because this is a preliminary margin, the Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate final

Vietnam-wide margin. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China*, 67 FR 79049, 79053–54 (December 27, 2002).

Margins for Section A Respondents

The exporters which submitted responses to Section A of the Department's antidumping questionnaire and had sales of the subject merchandise to the United States during the POI, but were not selected as mandatory respondents in this investigation (Section A respondents), have applied for separate rates and provided information for the Department to consider for this purpose. Therefore, for the Section A respondents which provided sufficient evidence that they are separate from the countrywide entity and answered other questions in section A of the questionnaire, we have established a weighted-average margin based on the rates we have calculated for the four mandatory respondents, excluding any rates that are zero, *de minimis*, or based entirely on adverse facts available. Companies receiving this rate are identified by name in the "Suspension of Liquidation" section of this notice.

Date of Sale

Section 351.401(i) of the Department's regulations state that "in identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business." After examining the sales documentation placed on the record by the respondents, we preliminarily determine that invoice date is the most appropriate date of sale for all respondents. We made this determination because, the record evidence does not demonstrate that any alternative date of sale used by the respondent that establishes the material terms of sale. *See Saccharin from China*, 67 FR at 79054.

Appropriate Basis for Comparison

On May 24, 2004, the Department requested comments from interested parties on whether product comparisons and margin calculations in this investigation should be performed based on data provided on an "as sold" basis or whether those comparisons and calculations should be performed on data converted to a headless, shell-on ("HLSO") basis.

On June 4, 2004, the Department received comments on HLSO comparison from Shantou Red Garden Foodstuff Co., Ltd. ("Red Garden"). On

June 7, 2004, and June 10, 2004, the Department received comments from the Petitioners in support of subject merchandise on an HLSO basis. Red Garden argues that by valuing shrimp products on an HLSO basis, when a significant quantity of such products are not sold on an HLSO basis, effectively requires converting shrimp products from a non-HLSO basis to an HLSO basis by employing conversion coefficients to the quantities and values of the subject merchandise. This conversion method alters the count-sizes and prices of shrimp in many instances where count-size and prices were not sold on an HLSO basis, but were subsequently converted for this investigation to an HLSO basis. Several other comments were submitted by interested parties both in support of and in opposition to calculating a margin on an HLSO basis, although those comments pertained to the Department's market economy analysis of product comparisons in the U.S., home, and/or third country markets. Since the market economy methodology of product comparisons does not apply in NME investigations, those comments will be addressed in the preliminary determinations for the market economy countries subject to this investigation.

Section 773(c)(1)(B) of the Act requires that the Department value the factors of production that a respondent uses to produce the subject merchandise. The Department notes that it will be less accurate to rely on HLSO quantities sold and HLSO values of the subject merchandise, rather than relying on actual quantities sold and actual values of the subject merchandise.

The Petitioners argue that using an HLSO conversion method will give a consistent basis for weight-averaging the unit margins in the calculation of the overall weight-averaged margin. To achieve the consistent measuring basis, the Petitioners' suggest converting actual quantities and values of subject merchandise sold by HLSO coefficients to standardize the different types of subject merchandise sold.

The Department examined the Petitioners' suggested methodology, which seeks to achieve a consistent measuring standard by adjusting subject merchandise product values and yields on a HLSO basis. However, the Department's current NME methodology for calculating margins also achieves consistency through valuing subject merchandise on an actual, as sold basis. The Department notes that when calculating the estimated weighted-average margin, the Department totals the margins for all CONNUMs to derive the total dumping margin of the

company. The values generated from totaling the margins and sales values for all CONNUMs do not require converting quantities to the same basis.

The Petitioners also argue that the CONNUM assignment should be altered to place more weight on the species of subject merchandise, as it is the species type that is a predominant factor in determining shrimp prices. However, the Department notes that the placement of the shrimp species category in the order of CONNUM assignments does not increase or decrease the weight given to that category in nonmarket economy margin calculations. In the NME margin calculation methodology, the CONNUM hierarchy is inconsequential to the normal value calculation, because each CONNUM characteristic is afforded equal weight when calculating CONNUM-specific normal values. However, as this issue is relevant to the market economy margin calculation methodology, this issue will be addressed by the preliminary determinations of the market economy countries subject to this investigation.

Fair Value Comparisons

To determine whether sales of certain frozen and canned warmwater shrimp to the United States of the four mandatory respondents were made at less than fair value, we compared export price ("EP") to NV, as described in the "U.S. Price" and "Normal Value" sections of this notice.

U.S. Price

In accordance with section 772(a) of the Act, we used EP for four of the mandatory respondents because the subject merchandise was first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, and because the use of constructed export price was not otherwise indicated.

We calculated EP based on the Cost & Freight, Free on Board or delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions, as appropriate, for any movement expenses (e.g., foreign inland freight from the plant to the port of exportation, international freight, marine insurance, cold-storage & warehousing, containerization and U.S. brokerage and handling) in accordance with section 772(c)(2)(A) of the Act. For a detailed description of all adjustments, see the company-specific analysis memorandum dated July 2, 2004. For a discussion of the surrogate

values used for the movements deductions, please see the *Memo to the File from Paul Walker through James C. Doyle, Program Manager to Edward C. Yang, Office Director, Regarding Factor Valuations ("Factor Valuation Memo")*, dated July 2, 2004 at 8–9 and at Exhibit 6.

For one Respondent, for certain sales, we used a starting EP price that differed from the gross unit invoice price that was used for the other Respondents because this Respondent demonstrated that its gross unit invoice price was not the price ultimately paid by one of its U.S. customers. Therefore, for U.S. sales made by this Respondent that were paid by this U.S. customers, we used an alternative price paid as provided in its U.S. sales database. For a detailed discussion of this issue, please see the company-specific analysis memorandum.

Headless, Shell-On ("HOSO") Shrimp

In their initial C and D questionnaire responses, the Respondents submitted their factors of production on a basis other than HOSO because their payment for the fresh shrimp input was based on a non-HOSO basis. However, after analyzing the Respondents' data, the Department found that the Respondents should have provided the data on an HOSO basis. In supplemental questionnaires, the Department asked the Respondents to submit factors of production on an HOSO basis. In their supplemental questionnaire responses, the Respondents chose not to provide their factors of production on an HOSO basis, but instead provided company-specific conversion factors to adjust the non-HOSO basis factors of production to an HOSO basis. Because the surrogate value used to value fresh shrimp is on an HOSO basis, the Department recalculated the Respondents' fresh shrimp factor of production using the company-specific conversion factors. For a detailed discussion of the conversion factors, please see the company-specific analysis memorandums. However, for one Respondent, Kim Ahn, the Department did not receive a company-specific conversion factor to adjust the non-HOSO factors of production to an HOSO basis in the supplemental questionnaire response.

Partial Adverse Facts Available

With regard to Kim Ahn's HOSO conversion factor, we have applied partial AFA because Kim Ahn failed to provide the conversion factor for the HOSO conversion.

Section 776(a)(2) of the Act provides that if an interested party: (A)

Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782(c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. We note that all three other Respondents provided this information and that all four Respondents, including Kim Ahn, have a similar production process. In addition, Kim Ahn did not provide an estimate of this conversion factor in its response. Therefore, facts available are appropriate because Kim Ahn failed to provide an HOSO conversion factor in its supplemental questionnaire response.

Section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available.

Therefore, pursuant to section 776(b) of the Act, the Department finds that in selecting from among the facts available, an adverse inference is appropriate, as Kim Ahn failed to cooperate to the best of its ability by not providing the HOSO conversion factor because it chose not to report it or offer an estimate of this conversion factor.

Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action ("SAA") accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. See section 776(b) of the Act. We are applying the highest HOSO conversion factor reported by the three other Respondents.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if the merchandise is exported from an NME country and the information does not permit the calculation of NV using home-market prices, third-country prices, or

constructed value under section 773(a) of the Act. The Department will base NV on factors of production because the presence of government controls on various aspects of these economies renders price comparisons and the calculation of production costs invalid under its normal methodologies.

For purposes of calculating NV, we valued the Vietnam factors of production in accordance with section 773(c)(1) of the Act. Factors of production include, but are not limited to hours of labor required, quantities of raw materials employed, amounts of energy and other utilities consumed, and representative capital costs, including depreciation. In examining surrogate values, we selected, where possible, the publicly available value which was an average non-export value, representative of a range of prices within the POI or most contemporaneous with the POI, product-specific, and tax-exclusive. We used the usage rates reported by respondents for materials, energy, labor, by-products, and packing. For a more detailed explanation of the methodology used in calculating various surrogate values, see *Factor Valuation Memo*.

Factor Valuations

We calculated NV based on factors of production reported by respondents for the POI. To calculate NV, we multiplied the reported per-unit factor quantities by publicly available Bangladesh surrogate values (except as discussed below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Bangladesh import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401 (Fed. Cir. 1997). For a detailed description of all surrogate values used for respondents, see *Factor-Valuation Memo*.

With regard to surrogate values and the market-economy input values, we have disregarded prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies

and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. See *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers From The People's Republic of China and accompanying Issues and Decision Memorandum*, 61 FR 66255 (February 12, 1996) at Comment 1. The legislative history provides that in making its determination as to whether input value may be subsidized, the Department is not required to conduct a formal investigation, rather, Congress directed the Department to base its decision on information that is available to it at the time it makes its determination. See H.R. Rep. 100-576 at 590 (1988). Therefore, based on the information currently available, we have not used prices from these countries either in calculating the Indian import-based surrogate values or in calculating market-economy input values. In instances where a market-economy input was obtained solely from suppliers located in these countries, we used Bangladeshi import-based surrogate values to value the input.

Except as discussed below, the Department used United Nations ComTrade Statistics ("UN ComTrade"), provided by the United Nations Department of Economic and Social Affairs' Statistics Division, as its primary source of Bangladeshi surrogate value data.⁶ The data represents cumulative values for the calendar year 2001, for inputs classified by the Harmonized Commodity Description and Coding System ("HS") number. For each input value, we used the average value per unit for that input imported into Bangladesh from all countries the Department has not previously determined to be non-market economy ("NME") countries. Import statistics from countries the Department has determined to be NME countries which subsidized exports (i.e., Indonesia, Korea, Thailand) were excluded in the calculation of average value. See *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China ("CTVs from the PRC")*, 69 FR 20594 (April 16, 2004).

It is the Department's practice to calculate price index adjusters using the wholesale price index for the subject country. See *Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Hand Truck and Certain*

Parts Thereof from the People's Republic of China, 69 FR 29509 (May 24, 2004). However, in this case, a wholesale price index was not available for Bangladesh. Therefore, where publicly available information contemporaneous with the POI with which to value factors could not be obtained, surrogate values were adjusted using the Consumer Price Index ("CPI") rate for Bangladesh, as published in the *International Financial Statistics ("IFS")* of the International Monetary Fund ("IMF").

Certain surrogate values were calculated using data from the *2001 Statistical Yearbook of Bangladesh* ("Bangladesh Government Statistics"), published by the Bangladesh Bureau of Statistics, Planning Division, Ministry of Planning. The information represents cumulative values for the period of 2001. Unit values were initially calculated in takas/unit. Since the values from Bangladesh government statistics were not contemporaneous with the POI, we adjusted the rate for inflation and converted the values to USD/kg using the Department's exchange rate for Bangladesh.

Bangladeshi surrogate values denominated in foreign currencies were converted to USD using the applicable average exchange rate for Bangladesh for the POI. The average exchange rate was based on exchange rate data from the Department's Web site.

Raw Shrimp Surrogate Value

Certain Respondents explained that a small percentage of subject merchandise was produced using frozen shrimp and not fresh raw shrimp as the main input, which was used for an overwhelming majority of their U.S. sales. In supplemental questionnaires, we asked these Respondents to link their subject merchandise sales to the frozen shrimp input. Of the Respondents who purchased frozen shrimp as the input to produce the subject merchandise, only one Respondent was able to link its U.S. sale to the frozen shrimp input. However, an analysis of the factors of production for this U.S. sale demonstrates that the factors of production are identical to those CONNUMs for sales that did not use frozen shrimp as an input. In addition, this Respondent explained that once it received the frozen shrimp, it was thawed and processed similar to those that are fresh. However, the surrogate values submitted by Respondents for frozen shrimp did not include a surrogate value for the count size for this frozen shrimp input. Although we recognize that valuing the shrimp input on a frozen shrimp basis would be more

accurate, we have preliminarily determined that we do not have the surrogate value for this count size, we will apply the HOSO raw shrimp surrogate value.

In addition, the Department notes that the value of the main input, HOSO shrimp, is an important factor of production in our dumping calculation as it accounts for a significant percentage of normal value. As a general matter, the Department prefers to use publicly available data to value surrogate values from the surrogate country to determine factor prices that, among other things: represent a broad market average; are contemporaneous with the POI; and are specific to the input in question. In this instance, none of the values placed on the record by the Respondents or the Petitioners wholly satisfies all three of these requirements.

The Department only considers using surrogate values outside the primary surrogate country if there are no values from that country available or if it decides that the values available are aberrational or otherwise unsuitable for use. The Respondents and the Petitioners have placed numerous Bangladeshi shrimp values on the record. In this case, the Department has found a suitable surrogate value for shrimp from the surrogate country. Therefore, using a surrogate value from a country other than one from Bangladesh is not necessary. Consequently, the Department did not use any shrimp values from a surrogate country other than Bangladesh.

The Department notes that the Petitioners and Respondents have argued at different times that count size is an important factor in the CONNUM creation. See Petitioners submission of February 4, 2004, at 3, and Respondents February 4, 2004, submission at Attachment 1. A review of the record shows that only the Respondents made an effort at creating count size shrimp valuations on the record. However, an analysis of the Respondents' count size methodology demonstrates that the final count size prices suggested by the Respondents relied upon numerous assumptions.

The Respondents began their count-size specific price analysis by using two prices, one for small shrimp and another for medium shrimp on a HOSO shrimp basis sold in Bangladeshi markets as obtained from the internet site of the Bangladeshi publication New Age Business. In order to convert these prices to count-size specific prices, the Respondents adjusted the New Age Business shrimp prices for medium and small shrimp to specific count sizes of shrimp using a definition of count sizes

⁶ This can be accessed online at: unstats.un.org/unsd/comtrade/.

as provided by the Monterey Bay Aquarium. Specifically, the Respondents assigned the small Bangladeshi market price to count sizes 36/40 and 41/50 and the assigned the medium price to count sizes 51/60 and 61/70. In order to value the remaining count sizes, the Respondents calculated adjustments necessary to derive the Bangladeshi values of shrimp with count sizes larger than the medium 36/40 and 41/50 count sizes as well as those shrimp smaller than the 51/60 count size by using count size specific prices reported for Thai shrimp as offered by FoodMarketExchange.com for September 2003.

Consequently, based on the evidence on the record, the Department finds that the count-size specific surrogate value submitted by the Respondents is not the most appropriate basis for valuing the raw shrimp input. Although the Department would prefer to use count-size specific surrogate values for the raw shrimp input, because there are several assumptions the Respondents make in creating the index that call into question the reliability of their price for the shrimp input, we did not use it in our margin calculations. Although the Respondents began their count size prices with Bangladeshi prices, only two prices were obtained for small and medium shrimp. The Respondents did not have prices for large shrimp, which are being sold to the United States during the POI. In addition, the count size distribution proposed by the Respondents is from Monterey Bay Aquarium in the United States, not Bangladesh. Although the Respondents argue this distribution is similar to an industry standard, they did not provide evidence to show how this compares to count sizes in Bangladesh, the surrogate country. For example, New Age Business lists a Bangladeshi converted price for medium-sized shrimp, but does not specifically list a count size for medium-sized shrimp. This has led the Respondents to arbitrarily place the converted price for Bangladeshi medium-sized shrimp into a U.S. based count size range as provided by the Monterey Bay Aquarium.

A review of the data submitted by the Respondents shows that this index is not a broad market average and is contemporaneous with only one week of the POI. See Respondents May 21, 2004, submission at Exhibit 3. It is clear that the Respondents' newspaper prices (New Age Business) do not represent a broad market average, rather, they represent price quotes which are subject to temporary market fluctuations. As the Respondents stated in their June 9, 2004, submission, the surrogate values

for shrimp "represent a range of price quotes available on the date the prices were obtained." See Respondents June 9, 2004, submission at 5. Broad market averages reflect values covering a substantial time frame making them less subject to temporary market fluctuations which would likely be reported in a newspaper. An example of this kind of fluctuation appears in the September 6, 2003, New Age Business article which includes statements that explain high or rising commodity prices as the result of disruption of trade with Myanmar. See Respondents May 21, 2004, submission at Exhibit 3.

In addition, we note that the basis for the prices used in this index are based on prices within Thailand, which is not one of the potential surrogate countries from the list provided by the Office of Policy. See the Department's March 12, 2004, letter to all interested parties concerning surrogate country selection.

Therefore, for the reasons stated above and because the HOSO shrimp surrogate price is critical to our analysis, we have chosen not to use the Respondents' index for this preliminary determination.

As a result, the Department valued raw, head-on, shell-on ("HOSO") shrimp, the main input to the subject merchandise, using data from the financial statement of a Bangladeshi company that processes shrimp, Apex Foods Limited ("Apex"). The data from Apex is specific to the price of raw shrimp, the factor of production accounting for a significant percentage of normal value. In addition, the financial statement is contemporaneous for three months of the POI, April 1, 2003, to June 30, 2003. Additionally, we recognize that although this price is not count-size specific, the alternative count-size specific prices proposed by the Respondents are less reliable than the price from Apex. Specifically, we note that Apex's figure represents the average price of all shrimp purchased during a 12-month period which would capture any daily, weekly or monthly differences in prices during this 12-month period. The Department has relied upon prices from Apex's financial statements in prior investigations. See *Notice of Final Antidumping Duty Determination of Sales at Less Than Fair Value and Affirmative Critical Circumstances: Certain Frozen Fish Fillets from the Socialist Republic of Vietnam and accompanying Issues and Decision Memorandum*, ("Fish Fillets") 68 FR 37116 (June 23, 2003) at Comment 14. For a discussion of other shrimp surrogate values, please see the *Factor Valuation Memo* at 4-6.

Other Factor Surrogate Values

To value phosphates, non-phosphates, salt and chlorine, we used UN ComTrade data as the primary source of Bangladeshi surrogate value data.

To value water, we used the average water tariff rate as reported in the Asian Development Bank's *Second Water Utilities Data Book: Asian and Pacific Region* ("ADB's Water Utility Book") (1997), based on the average of the Bangladeshi taka per cubic meter ("m³") rate for two cities in Bangladesh. We adjusted the average cost of water for the two cities for inflation and converted the value to USD. See *Factor Valuation Memo* at Exhibit 4.

To value electricity, the Department used a rate of 1.94 taka/kwh from Bangladesh government statistics. As the rate was not contemporaneous with the POI, we adjusted the rate for inflation and converted the value to USD. See *Factor Valuation Memo* at Exhibit 8.

To value natural gas, the Department used a rate of 2060 taka/m³ from Bangladesh government statistics. As the rate was not contemporaneous with the POI, we adjusted the rate for inflation and converted the value to USD. See *Factor Valuation Memo* at Exhibit 8.

To value diesel fuel, the Department used a rate of 13.88 taka/kg from Bangladesh government statistics. As the rate was not contemporaneous with the POI, we adjusted the rate for inflation and converted the value to USD. See *Factor Valuation Memo* at Exhibit 8.

Section 351.408(c)(3) of the Department's regulations requires the use of a regression-based wage rate. Therefore, to value the labor input, the Department used the regression-based wage rate for Vietnam published by Import Administration on our website. The source of the wage rate data is the *Yearbook of Labour Statistics 2001*, published by the International Labour Office ("ILO"), (Geneva: 2001), Chapter 5B: Wages in Manufacturing. See the Import Administration Web site: <http://ia.ita.doc.gov/wages/01wages/01wages.html>.

To value the by-products, the Department used a surrogate value for shrimp by-products based on a purchase price quote for wet shrimp shells from an Indonesian buyer of crustacean shells. Although we recognize that the Respondents reported by-products other than shells and that this surrogate value is not from Bangladesh, the primary surrogate, this information represents the best information on the record and is being used for this preliminary

determination. See *Factor Valuation Memo* at Exhibit 7.

To value packing materials, we used UN ComTrade data as the primary source of Bangladeshi surrogate value data.

To value factory overhead (“FOH”), Selling, General & Administrative (“SG&A”) expenses, and profit, we used the 2002–2003 financial statement of Apex Foods Limited (“Apex”), a Bangladeshi shrimp processor. See *Factor Valuation Memo* at Exhibit 9.

Critical Circumstances

On May 19, 2003, the petitioners alleged that there is a reasonable basis to believe or suspect critical circumstances exist with respect to the antidumping investigations of certain frozen and canned warmwater shrimp from Vietnam. On May 27, 2003, the respondents submitted comments on the petitioners’ allegation of critical circumstances. In accordance with 19 CFR 351.206(c)(2)(i), because the petitioners submitted critical circumstances allegations more than 20 days before the scheduled date of the preliminary determination, the Department must issue preliminary critical circumstances determinations not later than the date of the preliminary determination.

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and, (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department’s regulations provides that, in determining whether imports of the subject merchandise have been “massive,” the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department’s regulations provides that an increase in imports of 15 percent during the “relatively short period” of time may be considered “massive.” Section 351.206(i) of the Department’s regulations defines “relatively short period” as normally being the period

beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. The regulations also provide, however, that if the Department finds that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

In determining whether the relevant statutory criteria have been satisfied, we considered (i) the evidence presented by the petitioners in their May 19, 2003, filing; (ii) new evidence obtained since the initiation of the less-than-fair-value (“LTFV”) investigation (*i.e.*, additional import statistics released by the U.S. Census Bureau); and (iii) the ITC’s preliminary determination of material injury by reason of imports.

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 733(e)(1)(A)(i) of the Act, the Department normally considers evidence of an existing antidumping duty order on the subject merchandise in the United States or elsewhere to be sufficient. See *Preliminary Determination of Critical Circumstances: Steel Concrete Reinforcing Bars From Ukraine and Moldova*, 65 FR 70696 (November 27, 2000). With regard to imports of certain frozen and canned warmwater shrimp from Vietnam, the petitioners make no specific mention of a history of dumping for Vietnam. We are not aware of any antidumping order in the United States or in any country on certain frozen and canned warmwater shrimp from Vietnam. For this reason, the Department does not find a history of injurious dumping of the subject merchandise from Vietnam pursuant to section 733(e)(1)(A)(i) of the Act.

To determine whether the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales in accordance with 733(e)(1)(A)(ii) of the Act, the Department normally considers margins of 25 percent or more for export price sales, or 15 percent or more for constructed export price transactions, sufficient to impute knowledge of dumping. See *Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People’s Republic of China*, 62 FR 31972, 31978 (October 19, 2001).

In determining whether there are “massive imports” over a “relatively short period,” pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the “base period”) to a comparable period of at least three months following the filing of the petition (*i.e.*, the “comparison period”). However, as stated in section 351.206(i) of the Department’s regulations, if the Secretary finds importers, exporters, or producers had reason to believe at some time prior to the beginning of the proceeding that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time. Imports normally will be considered “massive” when imports during the comparison period have increased by 15 percent or more compared to imports during the base period.

For the reasons set forth in the *Critical Circumstances Memo*, we find that a sufficient basis exists for finding that importers, exporters, or producers knew or should have known an antidumping case was pending on certain frozen and canned shrimp imports from Vietnam by August 2003, at the latest. Therefore, in accordance with section 351.206(i) of the Department’s regulations, we determine December 2002 through August 2003 should serve as the critical circumstances “base period,” while September 2003 through May 2004 should serve as the “comparison period” in determining whether or not imports have been massive in the comparison period.

In this case, the total volume of imports of certain frozen and canned warmwater shrimp from Vietnam increased 28.84 percent from the critical circumstances base period (December 2002 through August 2003) to the critical circumstances comparison period (September 2003 through May 2004).

For three of the Respondents and the Section A Respondents, we preliminarily determine that importers should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales in pursuant to 733(e)(1)(A)(ii) of the Act, because the calculated margins were not above 25 percent or more for export price sales which is sufficient to impute knowledge of dumping. In addition, the volume of imports of certain frozen and canned warmwater shrimp from these Respondents were not above 15 percent

See *Critical Circumstance Memo* at Attachment I. Therefore, we preliminarily determine that these Respondents' imports were not massive pursuant to 733(e)(1)(B) of the Act. Therefore, we preliminarily find that no critical circumstances exist.

For one Respondent, we preliminarily determine that importer had no reason to know that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales pursuant to 733(e)(1)(A)(ii) of the Act, because the calculated margins were not above 25 percent or more for export price sales, which is sufficient to impute knowledge of dumping. However, the volume of imports of certain frozen and canned warmwater shrimp from this Respondent was above 15 percent See *Critical Circumstance Memo* at Attachment I. Although this Respondent had "massive" imports pursuant to 733(e)(1)(B) of the Act, the Department did not find that this Respondent had reason to know dumping existed. because its calculated dumping margin

below 25 percent or more for export price sales as required under 733(e)(1)(A)(ii) of the Act. Therefore, we preliminarily find that no critical circumstances exist for this Respondent.

With regard to the Vietnam-wide entity, we preliminary find that the importer knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales in accordance with 733(e)(1)(A)(ii) of the Act, because the Vietnam-wide margin is above 25 percent, which is sufficient to impute knowledge of dumping. However, the volume of imports of certain frozen and canned warmwater shrimp from the Vietnam-wide entity were not above 15 percent See *Critical Circumstance Memo* at Attachment I. Therefore, we preliminarily determine that the imports from the Vietnam-wide entity were not massive in accordance with 733(e)(1)(B) of the Act. Consequently, we preliminarily find that no critical circumstances exist.

Given the analysis summarized above, and described in more detail in the *Critical Circumstances Memo*, we preliminarily determine that critical circumstances do not exist for imports of certain frozen and canned warmwater shrimp from any exporters from Vietnam.

We will make a final determination concerning critical circumstances for all producers and exporters of subject merchandise from Vietnam when we make our final dumping determinations in this investigation, which will be 135 days after publication of the preliminary dumping determination.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

Preliminary Determination

The weighted-average dumping margins are as follows:

Manufacturer/exporter	Weighted-average margin (percent)
Certain Frozen and Canned Warmwater Shrimp from Vietnam—Mandatory Respondents	
Minh Phu	14.89
Kim Ahn	12.11
Camimex	19.60
Seaprodex Minh Hai	18.68
Vietnam-Wide Rate	93.13
Certain Frozen and Canned Warmwater Shrimp from Vietnam—Section A Respondents	
Amanda Foods (Vietnam) Ltd	16.01
C.P. Vietnam Livestock	16.01
Cai Doi Vam Seafood Import Export Company	16.01
Can Tho Agriculture and Animal Products Import Export Company	16.01
Cantho Animal Fisheries Product Processing Export Enterprise	16.01
Cuu Long Seaproducts Company	16.01
Danang Seaproducts Import Export Company	16.01
Hanoi Seaproducts Import Export Corp	16.01
Minh Hai Export Frozen Seafood Processing Joint-Stock Company	16.01
Minh Hai Seaproducts Co Ltd	16.01
Nha Trang Fisheries Joint Stock Company	16.01
Nha Trang Seaproduct Company	16.01
Pataya Food Industries (Vietnam) Ltd	16.01
Sao Ta Foods Joint Stock Company	16.01
Soc Trang Aquatic Products and General Import Export Company	16.01
Thuan Phuoc Seafoods and Trading Corporation	16.01
Viet Nhan Company	16.01

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with § 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct CBP to suspend liquidation of all entries of subject merchandise, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Customs shall require a cash deposit or the

posting of a bond equal to the estimated preliminary dumping margins reflected in the preliminary determinations published in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of the Department's preliminary affirmative determination of sales at less than fair value. Section 735(b)(2) requires that the ITC make a final determination before the later of 120 days after the date of the Department's preliminary determination or 45 days after the Department's final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of certain frozen and canned warmwater shrimp, or sales (or the likelihood of sales) for importation, of the subject merchandise. Because we have postponed the deadline for our final determination to 135 days from the date of publication of this preliminary determination, the ITC will make its final determination within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date of the final verification report issued in this proceeding and rebuttal briefs limited to issues raised in case briefs, no later than five days after the deadline date for case briefs. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing three days after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. See 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing,

each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

We will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: July 2, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04-16111 Filed 7-15-04; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-489-807]

Certain Steel Concrete Reinforcing Bars from Turkey; Notice of Extension of Time Limits for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results in the antidumping duty administrative review of certain steel concrete reinforcing bars from Turkey. This review covers three manufacturers/exporters of the subject merchandise to the United States. This is the fifth period of review (POR), covering April 1, 2002, through March 31, 2003.

DATES: Effective July 16, 2004.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482-0656 and (202) 482-3874, respectively.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act) requires the Department of Commerce to make a final determination in an administrative review within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within this time period, section

751(a)(3)(A) of the Act allows the Department to extend the time limit for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Extension of the Time Limit for Final Results of Administrative Review

The Department issued the preliminary results of this administrative review of the antidumping duty order on certain steel concrete reinforcing bars from Turkey on May 5, 2004 (69 FR 10666). The current deadline for the final results in this review is September 2, 2004. In accordance with section 751(a)(3)(A) of the Act, and 19 CFR 351.213(h)(2), the Department finds that it is not practicable to complete the review within the original time frame because this review involves a number of complicated issues for certain of the respondents, including affiliated producers and high inflation in Turkey during the POR. Moreover, one respondent, ICDAS Celik Enerji Tersane ve Ulasim Sanayi, A.S., has requested revocation in this review. Analysis of these issues requires additional time.

Because it is not practicable to complete this administrative review within the time limit mandated by section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), the Department is extending the time limit for completion of the final results of this administrative review until November 1, 2004.

Dated: July 8, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration, Group I.

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DEPARTMENT OF COMMERCE

International Trade Administration

Catawba College, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

Docket Number: 04-011. Applicant: Catawba College, Salisbury, NC 28114.